IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 44

UNITED STATES OF AMERICA,

Appellant,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO),

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

PETITION FOR REHEARING

The United Automobile Workers, appellee herein, respectfully moves for a rehearing of the opinion and judgment of this Court rendered March 11, 1957.

Counsel are not unmindful of the careful consideration which this Court gives to cases briefed and argued before it and of the Court's general practice of denying petitions for rehearing directed at published decisions of the Court.

But, as the majority opinion states, "this case . . . raises issues not less than basic to a democratic system"; and, as the minority opinion states, "the principle at stake . . . is as important an issue as has come before the Court, for it reaches the very vitals of our system of Government." This recognition by both majority and minority opinions of the fundamental significance of the issues involved in this case to the continued vitality of our democratic processes, together with the Court's unusual action in separating the question of statutory construction from that of the constitutional validity of the statute as construed, have seemed to counsel sufficient warrant for requesting the rehearing.[1] The separation of these two questions has implications for the adjudicatory process under the Criminal Appeals Act which, we believe, should be brought to the attention of the Court.

We believe and respectfully submit that the majority opinion seeks to separate the inseparable. The District Court, construing the statute narrowly to avoid the grave constitutional doubts raised by this Court in the *CIO* case and evident on the face of the statute, held the indictment outside the purview of the statute. This Court, viewing the question of statutory construction as something wholly separate and apart from the constitutional issues involved, found the statute broad enough to cover the facts alleged in the indictment and returned the constitutional issues to the District Court for trial.

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[1] It might be noted, too, that the Court has granted rehearing most recently in three cases in which the issues at stake were of far less public significance than those which the Court itself recognized as existing here and where no more compelling arguments for reconsideration of the Court's decision were advanced than will be set forth herein. *Elgin J. & E.R. Co.* v. *Burley*, 325 U.S. 711, rehearing granted, 326 U.S. 801, second opinions, 327 U.S. 661; *Gravet Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, rehearing granted, 337 U.S. 910, second opinions, 339 U.S. 605; *Reid* v. *Covert*, 351 U.S. 487, rehearing granted, 352 U.S. 901.

By this disposition of the case, we submit, the Court has rejected one of its own guiding principles. A statute placing restrictions on freedom of political activity cannot be construed in a vacuum unenlightened by the vital constitutional issues to which these restrictions give rise. "The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative." *United States* v. *Five Gambling Devices, etc.*, 346 U.S. 441, 448. And, in recent years, this Court has even "strained" statutory language to find such a reasonable alternative and thus to avoid constitutional issues in this area of political freedoms. *United States* v. *CIO*, 335 U.S. 106; *United States* v. *Rumely*, 345 U.S. 41. The Court's action in this case in sealing off into watertight compartments the related issues of statutory construction and constitutional validity negates its own policy of straining to find reasonable alternatives to a statutory construction which raises grave constitutional doubts.

Nor is there support for the Court's suggestion that Section 610 lacks ambiguity and that "only one interpretation may be fairly derived from the relevant materials." The decision of this Court in the *CIO* case is itself the best authority for the ambiguity of the statute. There, although the literal meaning of the word "expenditure" in the statute was admittedly as applicable to the facts set forth in the indictment as it is here and although the legislative history equally supported a broad interpretation of the word "expenditure," this Court found the word "expenditure" sufficiently ambiguous to strain for a narrow construction that would avoid constitutional doubts and held that the indictment failed to charge an

offense under the statute.[2] We respectfully suggest that the decision in the *CIO* case would have been otherwise had the Court adopted the procedure used in this case of deciding the interpretative issue in a vacuum unrelated to the constitutional issues. Indeed, it is precisely because the Court of Appeals for the Second Circuit in the *Painters Local* case followed the decisions of this Court favoring the avoidance of constitutional issues and relating the problems of statutory interpretation and constitutional doubts, that it held in circumstances identical to those here that the statute should be so limited in scope as not to cover the facts of that and this case.[3] And it can hardly be said that only one interpretation is possible in the face of the holding by three of the most respected Judges of the Court of Appeals in recent history—Judges A. Hand, Clark and Frank—that two interpretations *were* possible and that the one avoiding constitutional doubts should be chosen.

Indeed, the Court's opinion in this case is itself the best evidence of the inseparability of the interpretative and constitutional issues. For the very questions posed by the majority for resolution at the trial (slip opinion, p. 25) are at least as relevant to statutory construction as they are to constitutional validity. Under this Court's wise and historic rule of avoiding constitutional issues wherever possible, if these questions are in fact as significant as the Court indicated,[4] they should have been resolved

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[2] It should be remembered, too, that the Court's action in searching out a construction to avoid the constitutional issues was on its own initiative; the parties deemed the statute unambiguous and waived all questions of statutory construction.

[3] This, of course, was Judge Picard's reasoning, too. "What the Supreme Court has said," he wrote in his opinion below, "is not ambiguous to us" (R. 44).

[4] The opinion of the Court states four points on which matters "may be brought to the surface" by a trial (slip opinion, p. 24). On at least two of these four, matters are now already clearly at the surface. The indictment specifically alleges, and petitioner has never denied, that the

prior to a decision on statutory construction which makes an ultimate constitutional determination inevitable.

The majority's citation, as evidence of the need for trial, of Senator Taft's statements during the debates that prosecution under Section 610 may present difficult questions of fact is actually further evidence of the inseparability of the interpretative and constitutional issues. For the difficult questions of fact referred to by Senator Taft were not related to constitutional questions but to problems of the reach of the statute itself.[5] When Senator Taft said, "it is a question of fact which would have to be raised in every case," he was talking about statutory interpretation, not constitutional law.

We respectfully submit that the Court's reasoning in withholding constitutional adjudication was at least equally relevant to withholding statutory interpretation.

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Counsel recognize that the Criminal Appeals Act created a degree of embarrassment for this Court arising from the fact that Congress sought speedy decision in an area where the Court has traditionally resisted premature adjudication. The embarrassment is compounded of course when, as here, issues of statutory construction and constitutional validity are joined before the Court in the review of indictments revealing only the most minimal facts. We believe, however, that, with two possible

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broadcast was paid for out of the general dues of the union; and, of course, a broadcast over a commercial station must have reached the public at large. The remaining questions posed by the Court (whether the broadcast was active electioneering or simply a statement of the record of a candidate and whether it was intended to affect the results of the election), have at least as much significance for determining the scope of the statute (Brief for the United States, pp. 18-19) as they do for determining its constitutionality.

[5] See Senator Taft's colloquies set out at pp. 31-35 of the Brief for the United States and at the slip opinion p. 19, n. 1.

alternatives available for the resolution of this dilemma, this Court chose a third procedure (dividing inseparable issues) which contravenes its own principles and puts a premium on skeletal indictments.

1. The first alternative for resolving the Court's dilemma, of course, is that adopted by the Chief Justice, Mr. Justice Douglas and Mr. Justice Black; they reached and decided the momentous constitutional issues raised by the indictment. So, too, in other cases under the Criminal Appeals Act this Court has proceeded to consideration of the constitutional validity of the statute *on its face* after construing the applicable statute in such a way as to sustain the indictment. *United States* v. *Green*, 350 U.S. 415 [6]; *United States* v. *Harriss*, 347 U.S. 612. In this connection, it is significant that "prompt determinations of matters of great public interest" has been recognized as the reason underlying statutory direct appeals. *Fleming* v. *Rhodes*, 331 U.S. 100, 104. Congress surely had this public interest in mind when, in the Criminal Appeals Act, it authorized direct appeal prior to trial in cases in which the construction or constitutionality of a criminal statute is decided adversely to the Government.

2. The second alternative, of course, would have been to have returned the case for trial without deciding the question of the construction of Section 610. As we have seen, any factual enlightenment to be derived from a trial is as much required for the interpretative as for the constitutional issues. The factual issues on which this Court purports to seek further details are of as much intrinsic

[6] Although trial had been held in the *Green* case, this Court ruled only on the allegations of the indictment. 350 U.S. at 421.

importance to solving difficult problems of statutory scope as they are to clarifying questions of constitutional validity. There is no indication that Congress intended to require, nor could it constitutionally have required *(Cf. Ashwander* v. *Tennessee Valley Authority,* 297 U.S. 288, 346, concurring opinion of Mr. Justice Brandeis, and cases cited therein), that this Court decide interpretative issues on inadequate facts any more than it intended to require or could have required such decisions with respect to constitutional issues. This Court's strictures against hypothetical determinations are as applicable to statutory construction as to constitutional adjudication.

Conclusion

In a word, this Court should have decided both the statutory and constitutional questions or neither. By rejecting the two alternatives discussed above, the Court has been forced to attempt a separation of the inseparable and to render an interpretative decision on an indictment too minimal, in the Court's own view, for constitutional adjudication. If this decision stands, it will put a premium on the Government's use of minimal indictments rendered invulnerable by their generality. For under this decision, defendants must either go to trial unnecessarily or this Court must decide the questions of statutory interpretation brought up under the Criminal Appeals Act on a minimal factual basis and unrelated to constitutional issues. This petition for a rehearing raises an important question of this Court's processes of adjudication under the Criminal Appeals Act. We respectfully urge the Court to grant this petition for a rehearing so that it may consider whether

either of the alternatives suggested above more properly accord with its own precedents and principles.

Respectfully submitted,

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APRIL, 1957.

Certification

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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